

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
February 23, 2000 Session

**BOWEVIL EXPRESS, LLC, ET AL. v. CITY OF HENDERSON,  
TENNESSEE, ET AL.**

**An Appeal from the Chancery Court for Chester County  
No. 9388     Joe C. Morris, Chancellor**

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**No. W1999-02137-COA-R3-CV - Filed February 23, 2001**

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This is an annexation case. Owners of land within a proposed area of annexation brought a *quo warranto* suit contesting the city's annexation of the area, which included an industrial park, various businesses and several residences. The trial court held that the annexation was unreasonable, finding that the proposed annexation was solely for the purpose of increasing revenue without providing additional services, and that there was no showing that annexation would benefit city residents or persons within the area to be annexed. The city appeals. We reverse, finding that the city need not show that it would provide services in addition to those already being provided, and that annexation is reasonable under Tennessee Code Annotated § 6-51-101 et seq.

**Tenn. R. App. P. 3; Judgment of the Chancery Court is Reversed and Remanded.**

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J, joined.

Lewis L. Cobb, Jackson, Tennessee, for the Appellants, City of Henderson, Tennessee; Mayor Eddy Patterson; Doug Burkhead, Alderman; Odessia Austin, Alderman; Melburn Conner, Alderman; Robert W. King, Alderman; John McCaskill, Alderman; Dr. Elizabeth Saunders, Alderman; and Robert C. Barnes, Alderman.

Gregory D. Jordan and Jeffery G. Foster, Jackson, Tennessee, for the Appellees, Bowevil Express, LLC, Druies Yopp d/b/a Druies Used Cars, Grinnell Corporation, Nash Industrial Fabrication, NEO Products Corporation, Specialty Products, Inc., Mickey Ellis, Edward Plunk, and Jessie Plunk.

**OPINION**

This is an annexation case. On September 10, 1998, the Board of Aldermen of the Defendant/Appellant City of Henderson ("Henderson" or "City of Henderson" or "City") voted unanimously to pass an ordinance annexing an area northwest of the City, containing an industrial park, various businesses, and several residences ("the Area"). A portion of the Area lies in a flood

plain. The industrial park was developed approximately thirty years ago to bring industry, jobs, and economic growth to the community. The City of Henderson currently provides natural gas, water, and sewer services to the industrial park and pays for a portion of the industrial park's street lights. Henderson also provides fire protection to the industrial park at no charge, under an agreement between the City and one of the industries. In addition, Henderson provides gas and water to the majority of the other residences and businesses in the Area. The factories in the industrial park and the surrounding businesses and residences pay a premium for the use of City utilities. Henderson submitted testimony that it has the present intent and ability to provide police service, fire protection and public service, including sanitation and street maintenance, to the Area. Henderson also plans to expand sewer services to the Area.

On October 6, 1998, the Plaintiff/Appellee Bowevil Express, LLC, various other business in the industrial park, and other landowners in the Area ("the Landowners") filed a *quo warranto* action contesting the reasonableness of the annexation. The Landowners argued that Henderson's planned annexation was not reasonable under Tennessee Code Annotated § 6-51-101 et seq. because it was not for the welfare of the residents of the proposed annexation area or the city as a whole, nor was it necessary for the planned and ordered growth of the City of Henderson. The Landowners asserted that there was no need for additional services beyond those already provided by Henderson, and that annexation of the Area was for the sole purpose of increasing tax revenues for the City of Henderson because the City did not have the ability or intent to provide any additional needed services to the Area beyond those already provided.

At the trial on this matter, the Mayor of Henderson testified that the City had discussed annexing the Area for several years, as part of the City's larger plan to annex several surrounding areas over a five-year period. The Mayor asserted that both the City and the Area would benefit from annexation because expanded services to the Area would allow for more commercial development and, in turn, aid growth in the City and the industrial park. City officials testified that, in addition to the services currently offered, the City had the ability and planned to provide police service, street maintenance and expanded sewer services, to expand its fire service to the entire Area, and to provide other public services. Additional personnel had already been hired in preparation for the increased service.

The Landowners presented testimony that the services they were receiving at that time were adequate, and that they had no need for the additional services the City planned to offer. They asserted that the City did not have the ability or intent to provide the only service they needed, namely, the disposal of the industrial plants' solid and liquid industrial waste. The Landowners presented evidence that a large percentage of the Area lies in a flood plain, and that the cost of raising the plain to a level suitable for development would make future development difficult. They also presented evidence that the industrial park is essentially full. The Landowners contended that other areas currently receiving services provided by the City are more suitable for annexation because these areas have a density and character similar to that of the City of Henderson.

After considering the evidence, the trial court determined that the City's annexation would not benefit the Area because Henderson did not have the present ability or intent to provide additional services to the Area. It found that the services currently provided by the City were sufficient. Consequently, the trial court determined that the sole purpose of the proposed annexation was to increase tax revenue. The trial court also concluded that the Area was not an area of future growth, nor did it contain urban development and a density comparable to the City of Henderson. Therefore, the overall health, safety, and welfare of neither the individuals and businesses in the Area nor the City would be materially retarded by not annexing at this time. Moreover, annexation was not needed to protect property values or to guard against unsafe or unsanitary conditions "ringing the city." Consequently, the trial court found the proposed annexation unreasonable under Tennessee Code Annotated § 6-5-101 *et seq.* From this decision, the City of Henderson now appeals.

On appeal, the City of Henderson argues that the trial court erred in holding that the City's proposed annexation was unreasonable. The City maintains that the industrial park in the Area would not exist but for the municipal services already provided by the City, and that this demonstrates that the Area has a present need and use for the City's services. Henderson argues that it need not show an intent or ability to provide additional services beyond those already provided to the Area. However, Henderson also points to its plan to extend fire protection, police, and sewer services to the entire Area as demonstrating its ability and intent to render additional services to the Area.

The Landowners argue that the City's present intent and ability to provide municipal services is not dispositive in determining the reasonableness of the annexation. They contend that the City of Henderson must show that annexation is needed for the planned and orderly growth of the city; that annexation would prevent unsafe, unsanitary, or substandard development from surrounding the city; that it would preserve property values; that annexation would bring into the city limits urban areas of high density similar to the city to which they are adjacent; and that annexation would prevent the "material retardation" of both communities by enhancing their safety and welfare. The Landowners assert that the proposed area of annexation does not satisfy these requirements because it does not have urban density and development similar to that of the City of Henderson and it is not an area of future growth because it lies in a flood plain. Finally, the Landowners argue that the Area does not need any services beyond those already provided, and therefore the sole purpose for annexation is to increase revenue.

Our review of this case is governed by Rule 13(d) of the Tennessee Rules of Appellate Procedure, which provides that review of findings of fact by the trial court shall be *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the factual findings, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993). This case involves in part the proper standard for determining the reasonableness of a proposed annexation, since the trial court based its determination that the proposed annexation was not reasonable partly on its finding that the City did not have the intent or ability to provide additional services of benefit to the Area. The question of whether the test for reasonableness requires a city already providing services to an area to show an intent and ability to

provide additional beneficial services is one of law. Therefore, our standard of review on this issue is *de novo*, with no presumption of correctness. *See State ex rel. Schaltenbrand v. City of Knoxville*, 788 S.W.2d 812, 813 (Tenn. Ct. App. 1989). The issue of whether the annexation is reasonable, under the proper standard is a mixed question of fact and law.

In a *quo warranto* proceeding such as this, in which a proposed annexation is challenged, the annexing municipality must show that annexation “is reasonable for the overall well-being of the communities involved.” Tenn. Code Ann. §6-51-103(b). *See Cox v. City of Jackson*, No. 02A01-9701-CH-00002, 1997 WL 777078 at \*4 (Tenn. Ct. App. Dec. 18, 1997), perm. to appeal denied June 22, 1998. The issue is set forth in the statute:

[T]he question shall be whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality.

Tenn. Code Ann. § 6-51-103(c). The municipality must prove that the proposed annexation is “reasonably necessary.” *State ex rel. Wilson v. City of Lafayette*, 572 S.W.2d 922, 923 (Tenn. 1978). *See Cox* at \*4.

In *City of Kingsport v. State ex rel. Crown Enterprises, Inc.*, 562 S.W.2d 808 (Tenn. 1978), the Tennessee Supreme Court delineated factors to be considered in determining the reasonableness of a proposed annexation:

- a. the necessity for, or use of, municipal services;
- b. the present ability and intent of the municipality to render municipal services when and as needed;
- c. whether the annexation is for the sole purpose of increasing municipal revenue without the ability and intent to benefit the annexed area by rendering municipal services.

*Id.* at 812; *see also Saylor v. City of Jackson*, 575 S.W.2d 264, 266 (Tenn. 1978); *Cox*, 1987 WL 777078 at \*4.

The court should also consider whether annexation will benefit the citizens of the municipality and whether failing to annex the proposed area will inhibit the growth of the annexing municipality. *See State ex rel. Pitts v. Town of Smyrna*, No. 01A01-9406-CH-00276, 1994 WL 716237, \*1 (Tenn. Ct. App. Dec. 28, 1994) (citing *Vollmer v. City of Memphis*, 792 S.W.2d 446, 449 (Tenn. 1990) and *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545, 547 (Tenn. 1980)); *Cox*, 1997 WL 777078 at \*5.

In this case, the Area currently receives a multitude of services from the City of Henderson. The industrial park receives water, sewer, gas, and fire protection, while most of the other businesses and residents of the Area receive water and gas. One of the plaintiffs acknowledged that his business would not exist without the services Henderson presently provides.

The Landowners argue that they will not receive any benefit from the proposed annexation because they do not need any services beyond what Henderson currently provides. However, prior decisions considering the reasonableness of annexation ordinances have found evidence that residents of an area to be annexed were already receiving services from the annexing city to be an indication that the receipt of the services was beneficial to the area to be annexed. In *Pirtle v. City of Jackson*, 560 S.W.2d 400, 402 (Tenn. 1977), the Court found that the fact the area to be annexed was already receiving municipal services from the annexing city was an indication that the municipality had the ability and intent to provide beneficial municipal services, and that the annexation was not for the sole purpose of increasing municipal revenue. *See also Collier*, 599 S.W.2d at 548 (“The people and property owners of an area proposed for annexation have neither the moral nor legal right to stand aloof from the incorporated community of which they are a *de facto* a part, enjoying most of the benefits, but disclaiming their duty to participate in providing the essential services.”); *Cox*, 1997 WL 777078 at \* 6 (evidence of the current receipt of services is “clearly relevant to the issue of whether receipt of services is beneficial to the residents”).

Even if the City of Henderson could provide no additional municipal services, in addition to those currently provided, that would be of benefit to businesses and residents in the Area, this would not be determinative in finding that the proposed annexation is unreasonable. Adopting the Landowners’ argument, that a municipality furnishing the full panoply of services to an area to be annexed cannot annex the area unless it offers additional services desired by the area residents, would create an untenable situation; a municipality already providing the full range of services to a bordering area would be forever foreclosed from annexing it. In essence, the municipality would be unable to annex an area which is *de facto* a part of the city, enjoying most of the benefits, simply because the area already receives those benefits. *See Collier*, 599 S.W.2d at 548. *Kingsport* does not require that a proposed annex area receive additional benefits from an annexing city if services are already being provided. Rather, the test is whether a proposed area will benefit from services that an annexing city has the intent and ability to provide. *See Kingsport*, 562 S.W.2d at 812. The fact that the Area already receives multiple services from the City of Henderson demonstrates that the Area benefits from the services offered by Henderson and that the welfare of the residents of the Area is enhanced by the City’s services. In addition, the City of Henderson presented evidence that, after annexation, the Area would enjoy enhanced fire and police protection as well as expanded sewer services, public services, and utilities.

The Landowners argue that the proposed annexation is not reasonable because the City of Henderson failed to prove additional criteria, such as the fact that annexation is needed for the planned and orderly growth of the City, that annexation would prevent unsafe, unsanitary or substandard development from surrounding the City, that it would protect property values, that it would bring in areas density similar to the City’s and that annexation would prevent the “material

retardation” of the Area and the City. These factors are considerations that have been taken into account in assessing how an annexation would affect the safety, health, and welfare of the communities involved; however, the annexing municipality need not prove every factor in every case. The annexing municipality need only prove overall that annexation is “reasonable for the overall well-being of the communities involved.” Tenn. Code Ann. § 6-51-103(b) (1998).

The fact that the Area currently enjoys the receipt of multiple municipal services from the City of Henderson, coupled with the additional services the City of Henderson intends to provide, is sufficient under ***Kingsport*** to demonstrate the necessity of the municipal services, the ability and intent of the City of Henderson to render the needed municipal services, and that the annexation is not for the sole purpose of increasing municipal revenue. ***Kingsport***, 562 S.W.2d at 812. Under these circumstances, we conclude that the City of Henderson has carried the burden of providing that the annexation is reasonable under Tennessee Code Annotated § 6-5-101 *et seq.* Therefore, the decision of the trial court is reversed.

The decision of the trial court is reversed and remanded consistent with this Opinion. Costs are taxed to the Appellees, Bowevil Express, LLC, Druies Yopp d/b/a Druies Used Cars, Grinnell Corporation, Nash Industrial Fabrication, NEO Products Corporation, Specialty Products, Inc., Mickey Ellis, Edward Plunk, and Jessie Plunk, and their surety, for which execution may issue if necessary.

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HOLLY K. LILLARD, JUDGE